

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEITH T. TOWNS,

NO. CIV. S-04-1855 FCD/PAN

Plaintiff,

v.

AMENDED
STATUS (PRETRIAL SCHEDULING)
ORDER

AMERIQUEST MORTGAGE COMPANY,
TOWN AND COUNTRY TITLE
SERVICES, INC., NORTH AMERICAN
TITLE COMPANY, and DOES 1 to
10, inclusive,

Defendants.

After reviewing the parties' Joint Status Report, the court
VACATES the status conference set for January 12, 2007 and hereby
AMENDS the Status Order filed on January 3, 2005 as follows:

I. SERVICE OF PROCESS

All named defendants have been served. No further service
will be permitted without leave of court, good cause having been
shown.

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1 **II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS**

2 No further joinder of parties or amendments to pleadings is
3 permitted without leave of court, good cause having been shown.
4 See Fed. R. Civ. P.16 (b); Johnson v. Mammoth Recreations, Inc.,
5 975 F.2d 604 (9th Cir. 1992).

6 **III. JURISDICTION/VENUE**

7 Jurisdiction is predicated upon **18 U.S.C. § 1331 and**
8 **28 U.S.C. § 1441(b)**. Jurisdiction and venue are not contested.

9 **IV. DISCOVERY**

10 All discovery has been completed.

11 **V. DISCLOSURE OF EXPERT WITNESSES**

12 All expert discovery has been completed.

13 **VI. MOTION HEARING SCHEDULE**

14 No dispositive motions have been filed as to the remaining
15 defendants and the date in which to have a motion heard has
16 expired.

17 **VII. FINAL PRETRIAL CONFERENCE**

18 The Final Pretrial Conference is set for **September 7, 2007**
19 at **1:30 p.m.** At least one of the attorneys who will conduct the
20 trial for each of the parties shall attend the Final Pretrial
21 Conference. If by reason of illness or other unavoidable
22 circumstance a trial attorney is unable to attend, the attorney
23 who attends in place of the trial attorney shall have equal
24 familiarity with the case and equal authorization to make
25 commitments on behalf of the client.

26 Counsel for all parties are to be fully prepared for trial
27 at the time of the Final Pretrial Conference, with no matters
28 remaining to be accomplished except production of witnesses for

1 oral testimony. The parties shall file, not later than seven (7)
2 calendar days prior to the Final Pretrial Conference, a **joint**
3 pretrial statement. The provisions of Local Rules 16-281 shall
4 apply with respect to the matters to be included in the joint
5 pretrial statement. In addition to those subjects listed in
6 Local Rule 16-281(b), the parties are to provide the court with a
7 plain, concise statement that identifies every non-discovery
8 motion tendered to the court and its resolution.

9 Failure to comply with Local Rule 16-281, as modified by
10 this order, may be grounds for sanctions.

11 Concurrently with the filing of the Joint Final Pretrial
12 Conference Statement, counsel shall submit to chambers the word
13 processing version of the statement, in its entirety (including
14 the witness and exhibit lists) to: fcdorders@caed.uscourts.gov.

15 The parties shall, in a concise manner, jointly identify
16 **only** undisputed **core** facts separately that are relevant to each
17 claim. Disputed **core** facts should then be identified in the same
18 manner. The parties are reminded **not** to identify every fact in
19 dispute but only those disputed facts that are **essential** to the
20 formulation of each claim. Each disputed fact and undisputed
21 fact should be separately numbered or lettered. **Where the**
22 **parties are unable to agree what are the core disputed facts,**
23 **they should nevertheless list core disputed facts in the above**
24 **manner.**

25 Each party shall identify and concisely list each disputed
26 evidentiary issue which will be the subject of a party's motion
27 in limine.

28 Each party shall identify the points of law which concisely

1 describe the legal issues of the trial which will be discussed in
2 the parties' respective trial briefs. Points of law should
3 reflect issues derived from the core undisputed and disputed
4 facts. **Parties shall not include argument or authorities with**
5 **any point of law.**

6 The parties shall prepare a **joint** statement of the case in
7 plain concise language which will be read to the jury at the
8 beginning of the trial. The purpose of the joint statement is to
9 inform the jury what the case is about.

10 The parties are reminded that pursuant to Local Rule 16-281
11 they are required to attach to the Final Pretrial Conference
12 Statement an exhibit listing witnesses and exhibits they propose
13 to offer at trial. After the name of each witness, each party
14 shall provide a **brief** statement of the nature of the testimony to
15 be proffered. The parties may file a joint list or each party
16 may file separate lists. These list(s) shall not be contained in
17 the body of the Final Pretrial Conference Statement itself, but
18 shall be attached as separate documents to be used as addenda to
19 the Final Pretrial Order.

20 Plaintiff's exhibits shall be listed numerically.
21 Defendant's exhibits shall be listed alphabetically. The parties
22 shall use the standard exhibit stickers provided by the court:
23 yellow for plaintiff and blue for defendant. In the event that
24 the alphabet is exhausted, the exhibits shall be marked "AA-ZZ"
25 and "AAA-ZZZ" etc. All multi page exhibits shall be stapled or
26 otherwise fastened together and each page within the exhibit
27 shall be numbered. The list of exhibits shall not include
28 excerpts of depositions, which may be used to impeach witnesses.

1 In the event that plaintiff(s) and defendant(s) offer the same
2 exhibit during trial, that exhibit shall be referred to by the
3 designation the exhibit is first identified. The court cautions
4 the parties to pay attention to this detail so that all
5 concerned, including the jury, will not be confused by one
6 exhibit being identified with both a number and a letter.

7 The Final Pretrial Order will contain a stringent standard
8 for the offering at trial of witnesses and exhibits not listed in
9 the Final Pretrial Order, and the parties are cautioned that the
10 standard will be strictly applied. On the other hand, the
11 listing of exhibits or witnesses that a party does not intend to
12 offer will be viewed as an abuse of the court's processes.

13 Counsel shall produce all trial exhibits to Maureen Price,
14 the Courtroom Clerk, **no later than 3:00 p.m. on the Friday before**
15 **trial.**

16 Discovery documents to be listed in the pretrial statement
17 shall not include documents which will be used only for
18 impeachment and in rebuttal.

19 The parties also are reminded that pursuant to Rule 16 of
20 the Federal Rules of Civil Procedure it will be their duty at the
21 Final Pretrial Conference to aid the court in: (a) the
22 formulation and simplification of issues and the elimination of
23 frivolous claims or defenses; (b) the settling of facts that
24 should properly be admitted; and (c) the avoidance of unnecessary
25 proof and cumulative evidence. **Counsel must cooperatively**
26 **prepare the joint Final Pretrial Conference Statement and**
27 **participate in good faith at the Final Pretrial Conference with**

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1 **these aims in mind.**¹ A failure to do so may result in the
2 imposition of sanctions which may include monetary sanctions,
3 orders precluding proof, elimination of claims or defenses, or
4 such other sanctions as the court deems appropriate.

5 **VIII. TRIAL SETTING**

6 The trial is set for **November 6, 2007 at 9:00 a.m.** Trial
7 will by the court. The parties estimate a trial length of
8 approximately **2-4 days.**

9 **IX. SETTLEMENT CONFERENCE**

10 No settlement conference is currently scheduled. A
11 settlement conference may be set at the time of the Final
12 Pretrial Conference or at an earlier time at the parties'
13 request. In the event that an earlier settlement conference date
14 is requested, the parties shall file said request jointly, in
15 writing. If the case will be tried to a jury, all parties should
16 be prepared to advise the court whether they will stipulate to
17 the trial judge acting as settlement judge and waive
18 disqualification by virtue thereof.

19 Counsel, except for Counsel for the United States, are
20 instructed to have a principal with full settlement authority
21 present at the Settlement Conference or to be fully authorized to
22 settle the matter on any terms. At least seven (7) calendar days
23 before the Settlement Conference, counsel for each party shall
24 submit to the chambers of the settlement judge a confidential

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26 ¹ "If the pretrial conference discloses that no material
27 facts are in dispute and that the undisputed facts entitle one of
28 the parties to judgment as a matter of law," the court may
summarily dispose of the case or claims. Portsmouth Square v.
Shareholders Protective Comm., 770 F.2d 866, 868-69 (9th Cir.
1985).

1 Settlement Conference Statement. Such statements are neither to
2 be filed with the Clerk nor served on opposing counsel. Each
3 party, however, shall serve notice on all other parties that the
4 statement has been submitted. If the settlement judge is not the
5 trial judge, the Settlement Conference Statement shall not be
6 disclosed to the trial judge.

7 **X. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER**

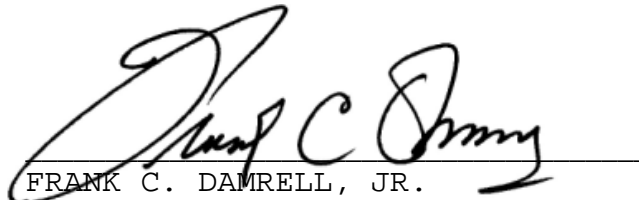
8 The parties are reminded that pursuant to Rule 16(b) of the
9 Federal Rules of Civil Procedure, the Status (Pretrial
10 Scheduling) Order shall not be modified except by leave of court
11 upon a showing of good cause. Agreement by the parties pursuant
12 to stipulation alone does not constitute good cause. Except in
13 extraordinary circumstances, unavailability of witnesses or
14 counsel does not constitute good cause.

15 **XI. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER**

16 This Status Order will become final without further order of
17 the court unless objections are filed within **ten (10) court days**
18 of service of this Order.

19 IT IS SO ORDERED.

20 DATED: January 12, 2007

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FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE